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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
19
20

21 **WEBSTER LUCAS,**

Petitioner,

23 **v.**

24 **CRAIG KOENIG,**

25 Respondent.
26
27
28

Case No. CV 19-00963-JLS (AS)

PROTECTIVE ORDER

STIPULATED PROTECTIVE ORDER

1.A. PURPOSES AND LIMITATIONS

Documents produced in this action are likely to involve the production of:

- a) files of, and any and all documents created, prepared, received, or maintained by, the Los Angeles County Alternate Public Defender's Office, Deputy Alternate Public Defender Kris Finley, their investigators or staff, in connection with their representation of Petitioner in *People v. Webster Lucas*, Los Angeles County Superior Court Case No. MA072908 ("*Lucas*"), including but not limited to file notes; and
- b) files of, and any and all documents created, prepared, received, or maintained by, the Los Angeles County District Attorney's Office, Los Angeles County Deputy District Attorneys Robert Sherwood, Yujin Yi, and Ryan Williams, their investigators or staff, in connection with their representation of the People in *Lucas*, including but not limited to file notes, witness checks, incident reports, and laboratory reports.

These documents are confidential privileged, or both, and may otherwise contain private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter this Stipulated Protective Order. The parties acknowledge that the Order does not confer blanket protections of protected documents and that the protection it affords from public disclosure and use outside the litigation of this federal habeas action extends only to the limited information or items that are entitled to confidential or privileged treatment under the applicable legal principles. The parties further

1 acknowledge, as set forth in Section 12.3, below, that this Order does not entitle
2 them to file confidential information under seal. Civil Local Rule 79-5 sets forth the
3 procedures that must be followed and the standards that will be applied when a
4 party seeks permission from the court to file material under seal.

5 B. GOOD CAUSE STATEMENT

6 This action is likely to involve communications subject to attorney-client
7 privilege and materials constituting attorney work product for which special
8 protection from public disclosure and from use for any purpose other than
9 prosecution of this action is warranted. Such confidential materials and information
10 consist of, among other things, information generally unavailable to the public, or
11 which may be privileged or otherwise protected from disclosure under state or
12 federal statutes, court rules, case decisions, or common law. To expedite the flow of
13 information, facilitate the prompt resolution of disputes over the confidentiality or
14 privileged nature of these materials, adequately protect information the parties are
15 entitled to keep confidential or privileged, ensure that the parties are permitted
16 reasonable necessary uses of such material in preparation for and in the conduct of
17 this litigation, address their handling at the end of the litigation, and serve the ends
18 of justice, a protective order for such information is justified in this matter. It is the
19 intent of the parties that information will not be designated as confidential or
20 otherwise protected for tactical reasons and that nothing be so designated without a
21 good faith belief that it has been maintained in a confidential, non-public manner
22 or—if made public—has been made public only during the course of and in
23 connection with this federal habeas action and that there is good cause why it
24 should be subject to the protections afforded by this Order

25 2. DEFINITIONS

26 2.1.Action: *Webster Lucas v. Craig Koenig*, United States District Court case
27 number CV 19-00963-JLS (AS).
28

1 2.2.Challenging Party: a Party or Non-Party that challenges the designation of
2 information or items under this Order.

3 2.3.“CONFIDENTIAL” Information or Items: Documents that qualify for
4 protection as specified above in the Good Cause Statement.

5 2.4.Counsel: Counsel of Record (as well as their support staff).

6 2.5.Designating Party: a Party or Non-Party that designates documents it
7 produces as “CONFIDENTIAL.”

8 2.6.Non-Party: any natural person, partnership, corporation, association, or other
9 legal entity not named as a Party to this action.

10 2.7.Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Counsel of Record (and their
12 support staffs).

13 2.8.Producing Party: a Party or Non-Party that produces documents in this
14 Action.

15 2.9.Protected Material: All papers, records, and other recorded data
16 (“documents”) that are voluntarily exchanged, disclosed pursuant to the
17 stipulated prehearing order subject to a designation of confidentiality and a
18 claim of privilege, and any and all documents obtained under a designation
19 of confidentiality or a claim of privilege. Protected Material shall not
20 include any document that is or was in the possession of an opposing party
21 or Producing Party prior to this proceeding.

22 2.10. Receiving Party: a Party that receives documents from a Producing Party.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above), but also (1) any information copied or
26 extracted from Protected Material; (2) all copies, excerpts, summaries, or
27 compilations of Protected Material; and (3) any testimony, conversations, or
28 presentations by Parties or their Counsel that might reveal Protected Material.

1 4. DURATION

2 4.1. Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition
5 shall be deemed to be the later of (1) dismissal of all claims and defenses in
6 this Action, with or without prejudice; and (2) final judgment herein after the
7 completion and exhaustion of all appeals, rehearings, remands, trials, or
8 reviews of this Action, including the time limits for filing any motions or
9 applications for extension of time pursuant to applicable law.

10 4.2. This Court shall have continuing jurisdiction to enforce its terms.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each
13 Party or Non-Party that designates information or items for protection under
14 this Order must take care to limit any such designation to specific material
15 that qualifies under the appropriate standards. The Designating Party must
16 designate for protection only those parts of material, documents, items, or
17 oral or written communications that qualify so that other portions of the
18 material, documents, items, or communications for which protection is not
19 warranted are not swept unjustifiably within the ambit of this Order. A
20 Party or Non-Party may not designate any information or item for protection
21 under this Order that that is or was in the possession of an opposing party or
22 Producing Party prior to this proceeding.

23 5.2. Mass, indiscriminate, or routinized designations are prohibited. Designations
24 that are shown to be clearly unjustified or that have been made for an
25 improper purpose (e.g., to unnecessarily encumber the case development
26 process or to impose unnecessary expenses and burdens on other parties)
27 may expose the Designating Party to sanctions.
28

1 5.3.If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating
3 Party must promptly notify all other Parties that it is withdrawing the
4 inapplicable designation.

5 5.4.Manner and Timing of Designations. Except as otherwise provided in this
6 Order (see, e.g., second paragraph of section 5.5(a) below), or as otherwise
7 stipulated or ordered, documents that qualify for protection under this Order
8 must be clearly so designated before the material is disclosed or produced.

9 5.5.Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic documents,
11 but excluding transcripts of depositions or other pretrial or trial proceedings), that
12 the Producing Party affix at a minimum, the legend "CONFIDENTIAL"
13 (hereinafter "CONFIDENTIAL legend"), to each document, electronic file, or page
14 that contains protected material. If only a portion or portions of the material of a
15 document, electronic file, or page qualifies for protection, the Producing Party also
16 must separate or clearly identify the protected portion(s) (e.g., by making
17 appropriate markings in the margins).

18 A Party or Non-Party that makes original documents available for inspection
19 need not designate them for protection until after the inspecting Party has indicated
20 which documents it would like copied and produced. During the inspection and
21 before the designation, all of the material made available for inspection shall be
22 deemed "CONFIDENTIAL." After the inspecting Party has identified the
23 documents it wants copied and produced, the Producing Party must determine
24 which documents, or portions thereof, qualify for protection under this Order. Then,
25 before producing the specified documents, the Producing Party must affix the
26 "CONFIDENTIAL legend" to each document, electronic file, or page that contains
27 Protected Material. If only a portion or portions of the material of a document,
28 electronic file, or page qualifies for protection, the Producing Party also must

1 separate or clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 (b) for information produced in some form other than documentary and for
4 any other tangible items, that the Producing Party affix in a prominent place on the
5 exterior of the container or containers in which the information is stored the legend
6 “CONFIDENTIAL.” If only a portion or portions of the information warrants
7 protection, the Producing Party, to the extent practicable, shall identify the
8 protected portion(s).

9 5.6. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
10 to designate qualified information or items does not, standing alone, waive
11 the Designating Party’s right to secure protection under this Order for such
12 material. Upon timely correction of a designation, the Receiving Party must
13 make reasonable efforts to assure that the material is treated in accordance
14 with the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation
17 of confidentiality at any time that is consistent with the Court’s Scheduling
18 Order.

19 6.2. Meet and Confer. The Challenging Party shall initiate the informal dispute
20 resolution process set forth in the Court’s Procedures and Schedules. *See*
21 <http://www.cacd.uscourts.gov/honorable-alka-sagar>.

22 6.3. The burden of persuasion in any such challenge proceeding shall be on the
23 Designating Party. Frivolous challenges, and those made for an improper
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on
25 other parties) may expose the Challenging Party to sanctions. Unless the
26 Designating Party has waived or withdrawn the confidentiality designation,
27 all parties shall continue to afford the material in question the level of
28

1 protection to which it is entitled under the Producing Party's designation
2 until the Court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1. Basic Principles. A Receiving Party may use Protected Material only for
5 prosecuting, defending, or attempting to settle this Action. Such Protected
6 Material may be disclosed only to the categories of persons and under the
7 conditions described in this Order. When the Action has been terminated, a
8 Receiving Party must comply with the provisions of section 16 below
9 (FINAL DISPOSITION). Protected Material must be stored and maintained
10 by a Receiving Party at a location and in a secure manner that ensures that
11 access is limited to the persons authorized under this Order.

12 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
13 ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Counsel of Record in this Action, as well as
17 employees of said Counsel of Record to whom it is reasonably necessary to
18 disclose the information for this Action;

19 (b) the officers, directors, and employees of the Receiving Party to whom
20 disclosure is reasonably necessary for this Action;

21 (c) the court and its personnel;

22 (d) court reporters and their staff;

23 (e) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information.

25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
26 OTHER LITIGATION

1 8.1.If a Party is served with a subpoena or a court order issued in other litigation
2 that compels disclosure of any information or items designated in this Action
3 as “CONFIDENTIAL,” that Party must:

4 (a) promptly notify in writing the Designating Party. Such notification
5 shall include a copy of the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order
7 to issue in the other litigation that some or all of the material covered by the
8 subpoena or order is subject to this Protective Order. Such notification shall include
9 a copy of this Stipulated Protective Order; and

10 (c) cooperate with respect to all reasonable procedures sought to be
11 pursued by the Designating Party whose Protected Material may be affected.

12 8.2.If the Designating Party timely seeks a protective order, the Party served
13 with the subpoena or court order shall not produce any information
14 designated in this action as “CONFIDENTIAL” before a determination by
15 the court from which the subpoena or order issued, unless the Party has
16 obtained the Designating Party’s permission. The Designating Party shall
17 bear the burden and expense of seeking protection in that court of its
18 confidential material and nothing in these provisions should be construed as
19 authorizing or encouraging a Receiving Party in this Action to disobey a
20 lawful directive from another court.

21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
22 IN THIS LITIGATION

23 (a) The terms of this Order are applicable to information produced by a Non-
24 Party in this Action and designated as “CONFIDENTIAL.” Such information
25 produced by Non-Parties in connection with this litigation is protected by the
26 remedies and relief provided by this Order. Nothing in these provisions should be
27 construed as prohibiting a Non-Party from seeking additional protections.
28

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-Party
6 that some or all of the information requested is subject to a confidentiality
7 agreement with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated
9 Protective Order in this Action, the relevant discovery request(s), and a reasonably
10 specific description of the information requested; and make the information
11 requested available for inspection by the Non-Party, if requested.

12 (c) If the Non-Party fails to seek a protective order from this court within 14
13 days of receiving the notice and accompanying information, the Receiving Party
14 may produce the Non-Party's confidential information responsive to the discovery
15 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
16 not produce any information in its possession or control that is subject to the
17 confidentiality agreement with the Non-Party before a determination by the court.
18 Absent a court order to the contrary, the Non-Party shall bear the burden and
19 expense of seeking protection in this court of its Protected Material.

20 10.UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
24 writing the Designating Party of the unauthorized disclosures, (b) use its best
25 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
26 person or persons to whom unauthorized disclosures were made of all the terms of
27 this Order, and (d) request such person or persons to execute the "Acknowledgment
28 and Agreement to Be Bound" that is attached hereto as Exhibit A.

1 11.INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order that provides for
8 production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
10 of a communication or information covered by the attorney-client privilege or work
11 product protection, the parties may incorporate their agreement in the stipulated
12 protective order submitted to the court.

13 12.MISCELLANEOUS

14 12.1.1. Right to Further Relief. Nothing in this Order abridges the right of
15 any person to seek its modification by the Court in the future.

16 12.1.2. Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to
18 object to disclosing or producing any information or item on any ground
19 not addressed in this Stipulated Protective Order. Similarly, no Party
20 waives any right to object on any ground to use in evidence of any of the
21 material covered by this Protective Order.

22 12.1.3. Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5. Protected
24 Material may only be filed under seal pursuant to a court order
25 authorizing the sealing of the specific Protected Material at issue. If a
26 Party's request to file Protected Material under seal is denied by the
27 court, then the Receiving Party may file the information in the public
28 record unless otherwise instructed by the court.

1 13. Knowledge of Protective Order. Each person (except Court personnel) to whom
2 disclosure of Protected Documents, or any portion thereof, is made, with the
3 exception of those identified in subparagraph d. above who are presumed to
4 know the contents of this Protective Order, shall, prior to the time of disclosure,
5 be provided a copy of this Protective Order by the person furnishing him/her
6 such material, and shall agree on the record or in writing that he/she has read the
7 Protective Order, and that he/she understands the provisions of the Protective
8 Order, and that he/she agrees to be bound by the provisions of this Protective
9 Order. Such person (except Court personnel) also must consent in writing to be
10 subject to the jurisdiction of the United States District Court, Central District of
11 California, with respect to any proceeding relating to enforcement of this Order,
12 including without limitation, any proceeding for contempt. Unless made on the
13 record in this litigation, counsel making the disclosure to any person described
14 above shall retain the original executed copy of said agreement until final
15 termination of this litigation.

16 14. Additional notations without prejudice to the rights of the Petitioner, the
17 Alternate Public Defender of Los Angeles County, and the Los Angeles County
18 District Attorney.

19 14.1. Nothing in this Protective Order is intended to prevent officials or
20 employees of the County of Los Angeles from having access to the
21 Protected Documents as they ordinarily would in the course of their job
22 duties.

23 14.2. Nothing in this Protective Order prevents subsequent disclosure of the
24 Protected Documents to defense attorneys representing Petitioner in a re-trial
25 or other post-conviction proceedings from gaining access to the Protected
26 Documents to the extent they are otherwise available through ordinary
27 discovery procedures or similar means.

28 14.3. Nothing in this order precludes a witness from disclosing events or

1 activities personal to him or her; that is, a witness can disclose to others
2 information previously given to the County of Los Angeles with respect to
3 what he or she saw, heard or otherwise sensed.

4 15.Retroactivity. This Protective Order, when entered into by the Court, shall be
5 retroactive to the date that this Action commenced.

6 16.FINAL DISPOSITION

7 16.1.1. After the final disposition of this Action, as defined in paragraph 4,
8 within 60 days of a written request by the Designating Party, each
9 Receiving Party must return all Protected Material to the Producing
10 Party or destroy such material. As used in this subdivision, "all Protected
11 Material" includes all copies, abstracts, compilations, summaries, and
12 any other format reproducing or capturing any of the Protected Material.
13 Whether the Protected Material is returned or destroyed, the Receiving
14 Party must submit a written certification to the Producing Party (and, if
15 not the same person or entity, to the Designating Party) by the 60 day
16 deadline that (1) identifies (by category, where appropriate) all the
17 Protected Material that was returned or destroyed and (2) affirms that the
18 Receiving Party has not retained any copies, abstracts, compilations,
19 summaries or any other format reproducing or capturing any of the
20 Protected Material. Notwithstanding this provision, Counsel are entitled
21 to retain an archival copy of all pleadings, motion papers, trial,
22 deposition, and hearing transcripts, legal memoranda, correspondence,
23 deposition and trial exhibits, expert reports, attorney work product, and
24 consultant and expert work product, even if such materials contain
25 Protected Material. Any such archival copies that contain or constitute
26 Protected Material remain subject to this Protective Order as set forth in
27 Section 4 (DURATION).
28

1 16.1.2. Any violation of this Order may be punished by any and all
2 appropriate measures including, without limitation, contempt
3 proceedings and/or monetary sanctions.

4 SO STIPULATED:

5 Dated: October 15, 2020

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LANCE E. WINTERS
Chief Assistant Attorney General
SUSAN SULLIVAN PITHEY
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17 /s/ Michael T. Drake

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19 MORIAH S. RADIN
20 Deputy Federal Public Defenders
Attorneys for Petitioner

21
22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23
24 Dated: October 6, 2020

/ s / Sagar
The Honorable Alka Sagar
United States Magistrate Judge

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